

## **CHAPTER 93: STREETS AND SIDEWALKS**

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#### ***Cross-reference:***

*Assessable current services, see ' 92.01*

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## **GENERAL PROVISIONS**

### **93.01 UNLOADING ON STREET OR SIDEWALK.**

No person shall unload any heavy material in the streets of the city by throwing or letting the material fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.

Penalty, see ' 10.99

### **93.02 STREET AND SIDEWALK OBSTRUCTION.**

No person shall obstruct any street, alley, sidewalk, or other public way within the city by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

Penalty, see ' 10.99

### **93.03 MATERIALS ON STREET OR SIDEWALK.**

(A) No person shall encumber any street, sidewalk, or right-of-way. No owner, occupant, or person having the care of any building or lot of land, bordering on any street, sidewalk, or right-of-way shall permit it to be encumbered with barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof.

(B) Except for the actions of the city employees and contractors carrying out their duties, no person shall:

- (1) Obstruct any street or sidewalk by depositing snow or ice thereon;
- (2) Dig any holes in any street, sidewalk or right-of-way;
- (3) Remove any earth, gravel, or rock from any street, sidewalk or right-of-way;
- (4) Obstruct any ditch draining any street or drain any noisome materials into any ditch;
- (5) Deface, mar, damage, or tamper with any structure, work, material, equipment, tools, signs, markers, signals, paving, guardrails, drains or any other highway appurtenance on or along any street, sidewalk or right-of-way.
- (6) Remove, injure, displace, or destroy right-of-way markers, or reference or witness monuments, or markers placed to preserve section or quarter-section corners;
- (7) Drive over, through, or around any barricade, fence, or obstruction erected for the purpose of preventing traffic from passing over a portion of

a street or sidewalk closed to public travel or to remove, deface, or damage any such barricade, fence or obstruction.  
Penalty, see ' 10.99

### **93.032 ACTIVITIES ON CERTAIN RIGHT-OF-WAYS**

The City of Lanesboro recognizes the following unique circumstances exist within the City:

- A. There is a need to strike a balance between the commercial activity on the sidewalks against the need to have a safe and attractive commercial district for the general public.
- B. That any obstructions to the sidewalk and free passage thereon, caused by placement of commercial items for sale or rent thereon, should be tolerated to a certain degree, given the tourism industry and connection with the Root River recreational trail, as above mentioned. The City also considers temporary commercial obstructions on the sidewalk to be less intrusive and troublesome than permanent commercial obstructions, distinguishing, however, those potential obstructions that are in the nature of parts of or fixtures to building or their entrances, such as steps, which are primarily regulated by building and zoning rules and regulations.
- C. The City of Lanesboro wishes to allow certain non-commercial placements on the sidewalks, such as rest area benches or aesthetic items, such a flower pots.
- D. The City of Lanesboro does hereby allow the following obstructions on the sidewalks in the downtown commercial district:
  - a. Allowable Obstructions.
    - i. Comfort or Aesthetic Items. Also allowable on the sidewalks shall be such public benches tables and chairs, garbage receptacles, and flower boxes or urns.
    - ii. Limited Commercial Activity on Sidewalks.
- E. Permits and Insurance. No sidewalk obstructions or placements shall occur until written permission, by way of a permit, is given in advance by the City of Lanesboro. Said permit shall regulate, in all respects, the terms under which said obstructions or placements may exist. Any obstruction or placement allowed on the sidewalk, of whatever nature, shall be preceded by proof that said placement or obstructions are continually covered by liability insurance, chargeable to the person or business seeking to place said obstructions, and said obstructions shall only be allowed as long as said insurance is in full force and effect. Said insurance, as to amount and coverage, shall be approved in advance by the City of Lanesboro, before any permit can be effective.
  - a) Special Events. Notwithstanding any other provision to the contrary, the City of Lanesboro may allow temporary placements on the sidewalks, on occasions connected with special events or promotions of a City-wide nature, and promoted by a recognized business or trade group. For example, if the Lanesboro business association wishes to have an evening, day or possibly week-end for sidewalk sales for a "Crazy Days" or other special event, that may

be allowed, but only by City Council permit given in advance. The City Council may establish conditions, including insurance requirements, if it deems necessary, in said permits.

F. Cost of Permit. The cost of obtaining a permit, for any obstruction, shall be paid for by the applicant, and shall be due in advance before the permit is issued. The City Council shall establish an amount or schedule of amounts for permits fees.

G. Violation. A violation of this Ordinance shall be deemed to be a Misdemeanor, punishable by the maximum penalty allowed under Minnesota State Law. In addition, the City of Lanesboro does retain all of its civil rights and remedies, including the right to enjoin or seek an Order removing said obstructions, all at the cost of the violating party.

### **93.033 PERMITTING RESTAURANTS TO OPERATE ON CITY SIDEWALKS**

**I. PURPOSE.** This ordinance is intended to safely permit, during the Covid 19 pandemic, and consistent with social distancing and Covid 19 precautions, restaurants to serve food and if so licensed in connection therewith alcoholic beverages, on certain public sidewalks in the City of Lanesboro (the "City.")

**II. Permit required.** Any establishment in the City which is licensed by the State of Minnesota to sell food for consumption on designated premises may apply to the City Council by and through the City administrator/Clerk/Administrator's office for a special permit to conduct a portion of such licensed business in a sidewalk cafe or by use of a vending cart on a part of the public sidewalk adjoining the licensed premises. Such permit shall be valid through December 31<sup>st</sup>, 2020.

**IV. Restrictions.** Each permit issued pursuant to this ordinance shall specify the area in which such cafe may be operated.

(a) No sale or service shall be permitted in any portion of the street designated for vehicular travel.

(b) The permit does not authorize any structure to be permanently installed or any equipment to be permanently attached to, in, or upon any public right-of-way.

(c) Sidewalks will be required to be swept and washed daily by the permit holder and trash disposal and electricity will be provided from within the establishment.

(d) A scaled diagram will be required to be submitted with information as requested on the application, including, but not limited to, the dimension of the sidewalk cafe area, position of tables, fixtures, any object to be placed on the sidewalk and the width of the sidewalk remaining for pedestrian use. In the case of establishments holding licenses for on-sale liquor, this diagram will be considered an expansion of the previously designated premises for the sale of liquor. The City will supply a base plan of the sidewalk area adjacent to the business to assist the applicant in preparing the scaled drawing for the proposed sidewalk cafe.

(e) Except as provided herein, no permit shall authorize a sidewalk cafe at any location prohibited by state law or Lanesboro City Code.

(f) Except as provided herein, the ownership, operation, and maintenance of a sidewalk cafe shall be subject to all applicable laws, ordinances, and regulations.

(g) No sidewalk cafe permit can be transferred to new ownership without permission of the City Council.

## **V. Permit procedure.**

(a) An applicant for a permit under this chapter shall file his application therefor with the City Council on forms provided by the City Clerk/Administrator.

(b) The City Clerk/Administrator shall also notify the public works department, the police department, City administration and the county health department of such application and they shall each report to the City Clerk/Administrator and make such recommendation as they deem appropriate.

(c) The recommendation of these departments, including the recommended minimum unobstructed sidewalk width necessary for pedestrian traffic on such application, shall be reported to the City Council for its action.

## **VI. Insurance.**

(a) No permit authorized by this chapter shall be effective until the applicant therefor has filed with the City Clerk/Administrator evidence of insurance insuring the applicant against liability imposed by law arising out of the ownership, maintenance, or operation of such sidewalk cafe in amounts established by resolution of the common Council. The City shall be named as an additional named insured in the policy providing such insurance. Such policy shall further provide that it may not be cancelled except upon ten days' written notice filed with the City Clerk/Administrator.

(b) No permit issued pursuant to the provisions of this chapter shall be valid at any time the insurance required herein is not maintained and evidence of its continuance filed yearly with the City Clerk/Administrator.

## **VII. Permit suspension and revocation.**

(a) Any special permit authorized by this chapter may be revoked at any time by the City Council when it appears that adequate grounds exist. Any such permit may be suspended by the City Council for such period as the Council shall determine.

(b) Upon the conviction of the permittee, his agent, servant, or employee for the violation of any City ordinance or state law in connections with the ownership, maintenance, or operation of such sidewalk cafe, the permit therefor shall automatically become suspended, which suspension shall continue until the Council has acted thereon.

## **VIII. Permit fees.**

No Permit fees.

### **93.20 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.**

In accordance with the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects pursuant to this chapter to manage rights-of-ways within its jurisdiction.

### **93.21 DEFINITIONS AND ADOPTION OF RULES BY REFERENCE.**

Minn. Rules Ch. 7819, as it may be amended from time to time, is hereby adopted by reference and is incorporated into this code as if set out in full. The definitions included in M.S. ' 237.162, Minn. Rules 7819.0100 subps. 1 through 23, and Minn. Rules 7560.0100 subps. 1 through 12 are hereby adopted by reference and are incorporated into this chapter as if set out in full.

### **93.22 PERMIT REQUIREMENT.**

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city.

(1) *Excavation permit.* An excavation permit is required to excavate that part of the right-of-way described in the permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless the person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and a new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subp. 3, as it may be amended from time to time and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by the Ordinance Establishing Fees and Charges, adopted pursuant to ' 30.11 of this code, as it may be amended from time to time.

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Clerk, Utilities Superintendent or other person designated by the Council.

Penalty, see ' 10.99

### **93.23 PERMIT APPLICATIONS.**

Application for a permit shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(A) Submission of a completed permit application form, including all required attachments, scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities, and the following information:

(1) Each permittee=s name, gopher one-call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) A certificate of insurance or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state, or a form of self-insurance acceptable to the Clerk, Utilities Superintendent or other person designated by the Council;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees, and permittees, and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all coverages;



(d) Requiring that the Clerk, Utilities Superintendent or other person designated by the Council be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Clerk, Utilities Superintendent or other person designated by the Council in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this chapter.

(4) The city may require a copy of the actual insurance policies.

(5) If the person is a corporation, a copy of the certificate of incorporation issued by the Secretary of State pursuant to M.S. ' 302A.155.

(6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

(B) Payment of money due the city for:

(1) Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the city because of the applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; or

(4) Franchise fees or other charges as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time, if applicable.

### **93.24 ISSUANCE OF PERMIT; CONDITIONS.**

(A) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the Clerk, Utilities Superintendent or other person designated by the Council shall issue a permit.

(B) *Conditions.* The director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its

current use. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to M.S. ' 216D.01 - 09 (Gopher One Call Excavation Notice System) and Minn. Rules Ch. 7560.

(C) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in M.S. Ch. 216D and Minn. Rules Ch. 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the city.

### **93.25 PERMIT FEES.**

Permit fees shall be in an amount established in the Ordinance Establishing Fees and Charges, adopted pursuant to ' 30.11, as it may be amended from time to time.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time, in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(B) *Obstruction Permit Fee.* The city shall establish the obstruction permit fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time, and shall be in an amount sufficient to recover the city management costs.

(C) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay those fees within 30 days of billing.

(D) *Non-refundable.* Permit fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time, that were paid for a permit that the Clerk, Utilities Superintendent or other person designated by the Council has revoked for a breach as stated in ' 93.33 are not refundable.

(E) *Application to franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

(F) All permit fees shall be established consistent with the provisions of Minn. Rules part 7819.1000, as it may be amended from time to time.

Penalty, see ' 10.99

### **93.26 RIGHT-OF-WAY PATCHING AND RESTORATION.**

(A) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this subchapter.

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with having to correct the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it may be required at the time of application for an excavation permit to post a construction performance bond or a deposit in accordance with the provisions of Minn. Rules part 7819.3000, as it may be amended from time to time.

(C) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100, as it may be amended from time to time. The Clerk, Utilities Superintendent or other person designated by the Council shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis.

(D) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by the permittee or its agents. The permittee upon notification from the Clerk, Utilities Superintendent or other person designated by the Council, shall correct all restoration work to the extent necessary, using the method required by the Clerk, Utilities Superintendent or other person designated by the Council. The work shall be completed within five calendar days of the receipt of the notice from the Clerk, Utilities Superintendent or other person designated by the Council, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this subchapter.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the Clerk, Utilities Superintendent or other

person designated by the Council, or fails to satisfactorily and timely complete all restoration required by the Clerk, Utilities Superintendent or other person designated by the Council, the Clerk, Utilities Superintendent or other person designated by the Council at his or her option may do the work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(F) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee as established by the Ordinance Establishing Fees and Charges adopted pursuant to ' 30.11 of this code, as that ordinance may be amended from time to time. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

### **93.27 SUPPLEMENTARY APPLICATIONS.**

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby, and be granted a new permit or permit extension.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

### **93.28 DENIAL OF PERMIT.**

The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

### **93.29 INSTALLATION REQUIREMENTS.**

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules part 7819.1100, as it may be amended from time to time and other applicable local

requirements, in so far as they are not inconsistent with M.S. ' ' 237.162 and 237.163, as they may be amended from time to time.

### **93.30 INSPECTION.**

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300, as it may be amended from time to time.

(B) *Site inspection.* The permittee shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(C) *Authority of Clerk, Utilities Superintendent or other person designated by the Council.*

(1) At the time of inspection, the Clerk, Utilities Superintendent or other person designated by the Council may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(2) The Clerk, Utilities Superintendent or other person designated by the Council may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the Clerk, Utilities Superintendent or other person designated by the Council that the violation has been corrected. If proof has not been presented within the required time, the Clerk, Utilities Superintendent or other person designated by the Council may revoke the permit pursuant to ' 93.33.

### **93.31 WORK DONE WITHOUT A PERMIT.**

(A) *Emergency situations.*

(1) Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities which it considers to be an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

(2) If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever

action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

(B) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for the permit, pay double all the other fees required by this code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter.

### **93.32 SUPPLEMENTARY NOTIFICATION.**

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the Clerk, Utilities Superintendent or other person designated by the Council of the accurate information as soon as this information is known.

### **93.33 REVOCATION OF PERMITS.**

(A) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to ' 93.30.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy that violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated

above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan, acceptable to the city, that will cure the breach. The permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

(D) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

### **93.34 MAPPING DATA; INFORMATION REQUIRED.**

(A) *Information required.* Each permittee shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100, as it may be amended from time to time.

(B) *Service laterals.* All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. Rules 7560.0150, Subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or other subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this division (B) and with applicable Gopher State One Call law and Minn. Rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for:

(1) Payments to contractors working on a public improvement project including those under M. S. Ch. 429;

(2) City approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462.

The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

### **93.35 LOCATION OF FACILITIES.**

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and

7819.5100, as they may be amended from time to time, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors*. The city may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

(C) *Limitation of space*. To protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Clerk, Utilities Superintendent or other person designated by the Council shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making those decisions, the Clerk, Utilities Superintendent or other person designated by the Council shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

### **93.36 DAMAGE TO OTHER FACILITIES.**

When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the Clerk, Utilities Superintendent or other person designated by the Council shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that owner's facilities.

### **93.37 RIGHT-OF-WAY VACATION.**

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200, as it may be amended from time to time.

### **93.38 INDEMNIFICATION AND LIABILITY.**



By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules 7819.1250, as it may be amended from time to time.

### **93.39 ABANDONED FACILITIES; REMOVAL OF ABANDONED FACILITIES.**

Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Clerk, Utilities Superintendent or other person designated by the Council.

### **93.40 APPEAL.**

A right-of-way user that has been denied registration; has been denied a permit; has had a permit revoked; believes that the fees imposed are invalid; or disputes a determination of the city regarding ' 93.34(B) of this chapter, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee as imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

### **93.41 RESERVATION OF REGULATORY AND POLICE POWERS.**

A permittees or registrants rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

### **93.50 LOCAL IMPROVEMENTS AND SPECIAL ASSESSMENTS**

#### **A. Legislative Authority**

The procedures used by the City of Lanesboro in levying the assessments conform to those specified in the Minnesota Statutes, Chapters 429, 444 and 475. However, these statutes do not establish how to measure benefit or how costs are to be apportioned. Therefore, this policy is intended to outline the method of determination and apportionment of the special benefit received by public improvements according to the philosophy and desires of the City Council.

#### **B. Purpose**

The purpose of these Special Assessment Policies is to set forth the policies and procedures for the determination of benefit and the assessment of cost of the various public improvements, which are constructed or reconstructed and installed by the City of Lanesboro pursuant to law or order of the City Council.

#### **C. General Statement of Policies**

The City Council of the City of Lanesboro hereby declares that these assessment policies contained herein are the policies that the City of Lanesboro is dedicated to

follow as nearly as possible and practical, and that improvement costs shall, whenever possible, be assessed against benefited property to the extent of benefits contributed to such property as set forth in these policy statements. It is not intended that any property shall receive the benefits of improvements without paying for them.

D. Scope and Limits

These assessment policies are designed to serve only as a general guide for the City Council in allocating benefits to properties for the purpose of defraying the cost of installing, maintaining or reconstructing public facilities. The Council reserves the right to vary from these policies if the policies act to create obvious inequities, or where the assignment of benefit to a particular property is difficult because of an extreme and unusual situation, which is unlikely to occur in the future, or if such variance is deemed to be in the best interest of the City of Lanesboro.

E. Eligible Cost for Assessment Proceedings

The City Council shall determine the total cost of the improvement by adding: The amount of contract cost; the cost of labor and materials furnished by the City if not contained in contract costs; the cost of engineering, legal, fiscal, and administration services provided by the City staff or other parties; the cost of acquiring property or right of way required by the improvement; interest costs incurred by the City between the time money is borrowed for the improvement and special assessments are levied for collection; and any other costs which in the opinion of the City Council should be included as part of the total project cost.

F. Rate and Terms of Assessments

The terms of the assessment shall be determined by the City Council for each separate project. The maximum term of any assessment shall be 15 years, but the City Council may at its discretion designate a shorter term. The interest rate should be at least one point higher than the bond net effective rate. If bonds are not issued, the rate should be one point higher than the interest rate the City would have incurred if they had borrowed the funds.

G. General City Cost

Where the project cost of an improvement is not entirely attributable to the need for service to the areas served by said improvement, or where unusual conditions beyond the control of the property owners in the area served by the improvement would result in an inequitable distribution of special assessments, the City, through the use of other funds, may pay such "City costs" which, in the opinion of the City Council, represents those costs not directly attributable to the area served.

*Examples of such City cost include, but are not limited to:*

1. Street construction in residential areas, beyond standard residential design required in order to accommodate arterial or collector traffic. City cost shall not

include the expense of additional street design required of industrial or commercial districts.

2. Oversized sanitary sewer lines or additional depth requirement requested by the City and not required by the area assessed.
3. Oversized water main or additional depth requirement requested by the City and not required by the area assessed.
4. Oversized storm sewer or additional depth requirement requested by the City and not required by the area assessed.
5. Any other improvement deemed necessary by the city council i.e., Lift Station, Sewer Treatment Facility, Storm Water Ponds, etc.

#### H. Use of Other Funds

If financial assistance is received from the federal government, from the State of Minnesota, or from any other source to defray a portion of the cost of a given improvement, such aid will first be used to reduce the city cost of the improvement. If the financial assistance received is greater than the City cost, the remainder of the aid may be used to reduce the special assessments against the benefiting properties.

#### I. City Property

City owned property, including municipal building sites, parks and playgrounds, but not including public streets and alleys shall be regarded as being assessable on the same basis as if such property was privately owned.

#### J. Original Improvements

Original improvements as required under the City's subdivision ordinance shall be paid 100% by the developer or through 100% assessment of the benefited property. In the event a developer wishes to use public financing, they will be required to sign a 100% Petition for Improvements document and agree to waive any claims for appealing the assessments.

#### K. Reconstruction of Improvements

Reconstruction is defined as: an entire block of a street, sanitary sewer, water or storm sewer line being replaced due to poor conditions. When any street improvements of direct benefit to a specific property must be replaced or reconstructed, the distribution of cost shall be 65% City and 35% paid by the benefiting property owners.

This is in contrast to a repair which is paid 100% by the City and defined as: a small section of a street, sanitary sewer, water or storm sewer line is replaced due to a break, leak, sag, or poor condition. An area must be less than one half of a block to be considered a repair.

Reconstruction of sidewalks is based upon commercial and residential:

1) Commercial: Any reconstruction of sidewalks in the commercial area is 100% the responsibility of the property owner. The sidewalk expenses can be assessed over a period time at an interest rate, both which shall be decided upon by the Council.

2) Residential: Any reconstruction of sidewalks in the residential area is 50% the responsibility of the property owner and 50% the responsibility of the city. The portion owed by the residential property can be assessed over the period of time decided upon by the Council.

For sidewalks damaged due to property owners' misuse or construction projects, the project owner is 100% responsible for damage repairs.

L. Improvement of existing streets, which does not include the original overlay required by the City's Subdivision Ordinance, falls into four categories:

1. Reconstruction. Pavement rehabilitation process that involves the complete rebuilding of the base of a roadway (grading) as well as the surface.

2. Mill and overlay. Pavement rehabilitation process that removes the top layer of bituminous pavement by the grinding action of a large machine called a "milling machine." The overlay part of the term refers to the placement of new bituminous pavement.

3. Reclamation. Pavement rehabilitation process that pulverizes old bituminous pavement and mixes it with the underlying aggregate, which prepares it for a new bituminous pavement. The process of reclaiming the existing pavement can also be used during a Reconstruction project as described above.

4. Seal Coating. The placement of sprayed oil to cover and seal the existing pavement.

The City shall assess improvements under this section according to recommendations of the engineer on the project, with council final approval, taking into account the statutory requirements that any assessment relate to the benefit bestowed on the benefited property.

#### M. Distribution of Assessments

The assessable costs of the improvement shall be distributed among the affected property owners according to one of the Procedures outlined below.

A. "Adjusted frontage" shall be expressed to the nearest foot.

B. "Area" shall be defined as the gross area of the parcel or lot which is benefited, in terms of square feet or acres. All property within district boundaries is to be included. District boundaries shall be determined by the Director of Public Works or the City Engineer.

C. "Unit" or "Lot": When the City Council determines that the assessable cost would be more equitably distributed on a "unit" basis; the assessable unit may be the "lot" (i.e., a uniform per lot assessment), REC (Residential Equivalent Connection), or other equitable unit adopted by the Council.

D. Measures of dimension, distance, or size shall be based on recorded platting data, whenever possible.

E. Distribution methods - several methods exist for assessing property benefited by local improvement projects. It is the policy of the City to use the method that most equitably distributes the project costs. A description of the methods generally used by the City appears in this section

Front foot method: Improvement costs are commonly distributed according to the "adjusted front footage" of a parcel or lot. In this method, the City determines a rate of assessment per front foot. This rate applies to each parcel as follows:

$$\text{Assessment} = \text{Assessment rate per front foot} \times \text{Parcel's adjusted front footage.}$$

The City will choose from among the following methods to calculate adjusted front footage based on which method best reflects the benefit received from the improvement.

#### Rectangular Interior Lots

For rectangular interior lots, the footage equals the dimension of the side of the lot abutting the improvement.

#### Cul-de-sac lots

For cul-de-sac lots, one of the following methods applies:

- (1) Footage equals the lot width at the building setback line; or
- (2) Footage equals the average of the front and rear lot lines.

#### Curved Frontage

For other lots with curved frontage, one of the following methods applies:

- (1) Frontage equals lot width at the building setback line; or,
- (2) Frontage equals lot width at the front line.

#### Irregular Shaped Lots

For lots with irregular shaped frontage equals the average width of the lot.

#### Corner Lots

When improvements are made to both sides of a corner lot, frontage will be determined by one of the following methods:

- (1) For sanitary sewer and water main improvements – adjusted frontage  
Frontage =  $x+y$  equals the average front footage of both sides.
- (2) For street and storm sewer Improvements - adjusted frontage equals the sum of both sides minus a side lot allowance of 50 feet. Frontage =  $(x+z) - 50$  ft.
- (3) For sidewalks – adjusted frontage equals the sum of both sides abutting the improvement, but not including the intersection. Frontage =  $x+y$

Area Method - Assessments may be distributed according to the gross of the benefited lot or parcel. The assessable area shall be expressed in terms of the number of acres or the number of square feet subject to assessment.

Assessment = Area to be assessed (acres or square feet) X assessment rate per acre or square feet.

Unit/Lot Method - When the City Council determines that the assessable cost would be more equitably distributed on a unit basis, all lots in the area to be included will be assess equally. This method shall be the basic method used for assessments when properties are initially developed by a single owner.

Assessment = Assessable Cost  
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Number of Lots

N. Deferment of Assessments

The Council may defer the payment of any special assessment on homestead property owned by a person who is 65 years of age or older, or who is retired by virtue of permanent and total disability, and the City Administrator is hereby authorized to record the deferment of special assessments where the following conditions are met:

- A. The applicant must apply for the deferment not later than ninety days after the assessment is adopted by the Council.
  - B. The applicant must be 65 years of age, or older, or retired by virtue of permanent and total disability.
  - C. The applicant must be the owner of the property.
  - D. The applicant must occupy the property as his principal place of residence.
  - E. The applicant's income from all sources shall not exceed the low income limit as established by the Department of Housing and Urban Development, as used in determining the eligibility for Section VIII housing.
2. The deferment shall be granted for as long a period of time as the hardship exists and the conditions, as aforementioned, have been met. However, it shall be the duty of the applicant to notify the City Administrator of any change in his status that would affect eligibility for deferment.
  3. The entire amount of deferred special assessments shall be due within 60 days after loss of eligibility by the applicant. If the special assessment is not paid within 60 days, the City Administrator shall add thereto interest at eight percent (8%) per annum from the due date through December 21 of the following year and the total amount of principal and interest shall be certified to the County Auditor for collection, with taxes the following year. Should the applicant plead and prove, to the satisfaction of the Council, that full repayment of the deferred special assessment would cause the applicant particular undue financial hardship, the Council may

order that the applicant pay within 60 days a sum equal to the number of installments of deferred special assessments outstanding and unpaid to date, (including principal and interest) with the balance thereafter paid according to the terms and conditions of the original special assessment.

4. The option to defer the payment of special assessments shall terminate and all amounts accumulated plus applicable interest shall become due upon the occurrence of any one of the following:

- A. The death of the owner when there is no spouse who is eligible for deferment.
- B. The sale, transfer, or subdivision of all or any part of the property.
- C. Loss of homestead status on the property.